



# Act 220 2022 Updates to the Sunshine Law

Created for the January 21, 2022 Climate Change Commission meeting  
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**The information contained in this presentation is presented for informational purposes only, and does not constitute legal advice.**

# RESOURCES

- ▶ State of Hawai‘i Office of Information Practices (OIP): [oip.hawaii.gov](http://oip.hawaii.gov)
- ▶ Training materials: [oip.hawaii.gov/training](http://oip.hawaii.gov/training)
- ▶ Suggested material:
  - ▶ “Open Meetings: Guide to ‘The Sunshine Law’ for State and County Boards” (October 2021) (effective 1/1/2022)
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  - ▶ “In-Depth Sunshine Law Requirements for Multi-Site and Remote Meetings Effective January 1, 2022” (December 2021) (effective 1/1/2022)



# Note on Governor's Dec. 29, 2021 Proclamation

- ▶ December 29, 2021: Emergency Proclamation Related to Sunshine Law In-Person Meetings
  - ▶ **SUSPENDS** Act 220 only to the extent that Act 220 requires remote meetings held via interactive conference technology to have at least one meeting location that is open to the public.
  - ▶ Effective through February 28, 2022, unless Proclamation is earlier terminated or superseded by a separate proclamation.



# Options for Meeting Formats After Act 220

- ▶ In Person
- ▶ Multi-site via Interactive Conference Technology (ICT) (HRS § 92-3.5)
- ▶ Remote Meeting (held via ICT) (HRS § 92-3.7)
- ▶ “Interactive Conference Technology” means “any form of audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.” HRS § 92-2.



# Multi-Site Meetings (HRS § 92-3.5)



- ▶ “A board may hold an in-person meeting at multiple meeting sites connected by [ICT]; provided that the [ICT] used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by Section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present.”
  - ▶ Board members may not join at these additional locations (or at any other non-noticed location)
- ▶ Notice must list “any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).”

# Multi-Site Meetings (HRS § 92-3.5)

*(cont'd.)*



- ▶ Loss of connection requirements:
  - ▶ Upon loss of audio connection to any location, automatic recess for up to 30 minutes to restore communication
  - ▶ Meeting may reconvene “when either audio or audiovisual communication is restored”
  - ▶ If audio-only restored, then within 15 minutes of restoration, “copies of nonconfidential visual aids that are required by or brought to the meeting by the board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations shall not be acted upon at the meeting.”
  - ▶ If not possible to reconvene the meeting within 30 minutes, and reasonable notice has not been provided as to how the meeting will be continued at an alternative date and time, then the meeting is automatically terminated.

# Multi-Site Meetings (HRS § 92-3.5)

*(cont'd.)*

- ▶ Board members with disabilities that limit or impair the member's ability to physically attend a noticed meeting may participate from a location not noticed and not accessible to the public, so long as audiovisual connection is maintained and the member identifies who else is present.



# Remote Meeting by ICT (HRS § 92-3.7)



- ▶ ICT must “allow[] audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided[.]”
- ▶ Post-Feb 28, there must be at least one physical meeting location that is open to the public and has an audiovisual connection.
- ▶ No requirement to allow members of the public to join board member at nonpublic location. However, board member must state “who, if anyone, is present at the nonpublic location with the member.”



# Remote Meeting by ICT (HRS § 92-3.7)

*(cont'd.)*



- ▶ NOTICE requirements:
  - ▶ List at least one location that is open to the public that has audiovisual connection
  - ▶ Inform members of the public how to contemporaneously:
    - ▶ “Remote view the video and audio of the meeting through internet streaming or other means”; and
    - ▶ “Provide remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.”
  - ▶ “List any additional locations open for public participation and specify, in the event an additional location loses its audiovisual connection to the remote meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).”

# Remote Meeting by ICT (HRS § 92-3.7)

*(cont'd.)*



- ▶ Technology used “shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting.”
- ▶ Quorum must be visible and audible during the meeting, and no other meeting participants are required to be visible during the meeting.
- ▶ Any board member participating shall be considered present for purposes of quorum and voting
- ▶ At start of meeting, presiding officer shall announce the names of the participating members
- ▶ All votes are conducted by roll call unless unanimous (i.e. “Are there any objections or abstentions?” If yes, then roll call required.)

# Remote Meeting by ICT (HRS § 92-3.7)

*(cont'd.)*



- ▶ Meeting should be recorded “when practicable and the recording made electronically available to the public “as soon as practicable” after a meeting
  - ▶ Recording must remain posted until minutes are electronically posted to the board’s website.
  - ▶ Board has option of using recording and a written summary in lieu of written minutes, or can just delete the recording once written minutes are posted online.

# Remote Meeting by ICT (HRS § 92-3.7)

*(cont'd.)*



- ▶ Loss of connection:
  - ▶ If audiovisual communication cannot be maintained with all members participating in the meeting, with the public location, or with the remote public broadcast, then the meeting is automatically recessed up to 30 minutes.
  - ▶ Meeting may reconvene when either audiovisual communication is restored, or audio-only after an unsuccessful attempt to restore audiovisual, but ONLY if reasonable notice was provided as to how to access the reconvened meeting after an interruption to communication.
  - ▶ If audio-only restored, then each speaker must state name before making remarks
  - ▶ Within 15 minutes after audio-only restored, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or are part of a scheduled presentation shall be made available, and no action is allowed on agenda items for which visual aids are not made available.
  - ▶ If not possible to reconvene within 30 minutes and no reasonable notice provided to the public as to how the meeting will be continued at an alternative date and time, then the meeting is automatically terminated.

# Remote Meeting by ICT (HRS § 92-3.7)

*(cont'd.)*



- ▶ Executive Meetings:
  - ▶ Board members must be audible to other authorized participants
  - ▶ Visibility not required
  - ▶ Presiding officer shall “publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection”
  - ▶ Person organizing the ICT “shall confirm that no unauthorized person has access to the executive meeting as indicated on the control panels of the interactive conference technology being used for the meeting, if applicable.”

# Key Differences between Remote Meetings and Multi-Site Meetings?



- ▶ A multi-site meeting is essentially a remote meeting officially held at multiple physical locations. Remote meetings only require ONE physical public location (and additional options to remotely view the meeting).
  - ▶ Multi-Site: Each official physical location where a board member is present is open to the public, and members of the public may join the board member.
  - ▶ Remote: Members of the public are not required to be able to join the board member at their physical, nonpublic location.
- ▶ NOTICE requirements differ based on what needs to be identified as official, open to the public locations

# Similarities between Remote Meetings and Multi-Site Meetings?

- ▶ If connection is lost in a way that impacts the open and public nature of the meeting, then there is an automatic recess and up to 30 minutes max to reconvene
  - ▶ If reconvened via audio only, then nonconfidential visual aids must be made available within 15 minutes after restoration; no action allowed on agenda items for which aids are not distributed
  - ▶ If communication cannot be restored beyond 30 minutes, and the notice did not state how the meeting will be continued at an alternative time and date, then meeting is automatically terminated



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